83-1521

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. _____

MORRIS WEISS ,

PETITIONER,

V.

SHEET METAL WORKERS UNION LOCAL 544

PENSION TRUST PLAN, et al.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE NINTH CIRCUIT COURT OF APPEALS

IN CASE NO. 82-3056

PRO PER FOR PETITIONER

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QUESTION(S) PRESENTED FOR REVIEW

1. Should Petitioner, as a Union Member be entitled to his "rights"(et seq) in requesting accounting information regarding his account with the Union' Pension Trust Plan under Employee Retirement Income Security Act (ERISA) of 1974, of Congress, (29 U.S.C. § 1001 et seq), first proving he is a "vested participant" in that Pension Plan ?

2. Did the Ninth Circuit Court err, in their determination; that with ERISA, to be a "participant" you first had to prove you are "vested"; even without a determination, that the Plan's "vesting" bookkeeping was "suspect", and no Audit-accounting done ?

3. Should the Administrator of a Union Pension Trust Plan be required to provide an audit-accounting to a Union Member, with respect to his account when the information previously provided by the

Administrators was inaccurate on its face? And without the disregarding of 29 U.S. C. § 1027, ERISA's Section 107 ?

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UNITED STATES SUPREME COURT, CERTIORARI TO THE U.S. CT. OF APPEALS,7TH CIR., OF DANIEL v TEAMSTERS PEN. TRUST PLAN. NO. 77-753, Argued Oct. 31, 1978, Decided Jan.16, 1979 (Section IV of OPINION). -------- 18,20,21,28

(Footnote): In the above cited,HAGER v VECO, case, further revelations are to be found in BPR, 9-10-78, D/C, Judge N.Bua, presiding, awarded judgment for plaintiff on Aug. 17, 1979.

In the same case, same district, and number, 78- C-4634, U.S. D/C N.Dist. of Ill. Eastern Division,on Oct. 3, 1980, U.S. Dist Ct. Judge James B. Moran, presiding, awarded monetary Statuatory Damages Penalities, and OPINION on ERISA, as a result of the Defendants' violation of the disclosure requirements of ERISA. The award was on October 3rd, 1980)

OPINIONS BELOW

The opinion of the Ninth Circuit Court Of Appeals was reported at 719 F.2d (9th Cir. Ct. 1983) (APP-11), and Rehearing was denied December 23, 1983, (APP-17). The Opinion of the U.S. District Court, dated January 25, 1982, (APP-7). A earlier previous Order (Opinion) was dated December 10, 1981 (APP-1), of U.S. District Court Judge J. Redden.

JURISDICTION

The judgment of the 9th Circuit Court was entered on October 25th, 1983)APP-11); Petitioner timely filed a Petition For Rehearing. The Order of the Ninth Circuit denying that petition was entered on December 23,1983 (APP-17). The U.S. Supreme Court's Jurisdiction is envolked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

One federal statute is involved, concerning ERISA; and another statute is used as an example of, "the right to know". The ERISA statute(s) refers to "disclosure rights" of member (employee') of a Pension Trust Plan, as per Sections of ERISA, found in P.L. 93-406 (29 U.S.C. § 1001). The other statute is, "The Freedom Of Information Act of Congress of 1974, (amended 1976),(and featured in U.S. Supreme Court decisions). This statue is used as an example, that a large entity, like the U.S. Government, has been made to,"disclose requested information", under the,"right to know", civil rights of a citizen of the United States. And that denial, is censorship; of the First Amendment,of the United States Constitution.

STATEMENT OF THE CASE

In a legal litigation, in District Court of Multnomah County, Portland Oregon, between Plaintiff, Morris WEISS v SHEET METAL WORKERS LOCAL # 544 PENSION TRUST PLAN, State Judge Alvin E. York ordered Plaintiff Weiss, "to pursue his administrative remedies, (APP-22&23). This would be as in, LUCUS v WARNER & SWASEY CO. U.S. Dist. Ct. East. Penn. No. 79-1979; and SCHEIDER v U.S. STEEL CO. & CARNEGIE PENSION PLAN, U.S. DIST. CT., WESTERN DIST. OF PENN.,(C/A NO. 78-1350, March 17, 1980).(Table of Auth. herein). Plaintiff Weiss was also ordered by State Court Judge E.A. York, "to submit"a "Supplimentary Affidavit To Contravene Defendant's Motion For Summary Judgment". (APP-22&23).

Plaintiff Weiss then requested of the defendant Pension Trust Plan of Sheet Metal & 544, for a, "request of,'disclos-

ure", (as per,"discovery of information") as allowed per, with ERISA, P.L. 93-406, (29 U.S.C. § 100], Sections, pertaining to an, "audit-accounting", as allowed by Sections (ERISA) of 103(3)(A); and 104 (4)(A); and especially Section 107; and under Section 503(2), for, "areasonable opportunity for a full and fair review of a denial of a claim". These two requests of,"discovery", were needed to show the court and Judge, "of the pursuit of administrative remedies", and to be used, and be part of the,"contravening affidavit of a 'supplimentary affidavit". It is to be noted that State Judge A.E. York, at a hearing, stated "he could not do anything about, "disclosure of ERISA', as it was out of his jurisdiction, and belonged in another court". (See APP-1, where U.S. District Court Judge J.A. Redden says:)

> "... sic... of the prior State court proceedings, it appears that the judge in that proceedings may

> possibly have felt that he lacked jurisdiction to consider Weiss's claims that he was denied procedural safeguards mandated by ERISA. certainly a claim for damages as result of wrongful refusal to provide Weiss with required information could not be bared by the state proceedings, since exclusive jurisdiction over such a claim is conferred on the federal courts by 29 U.S.C. § 1132 (e)(1)."

(At the time of the State Court proceedings, Weiss interpreted this to mean U.S. Federal Court). Plaintiff lost his case, (in State Court), mostly, (he believes) upon this lack of (not forecoming) "disclosure of information", requested, as,"discovery" in the State Court proceedings, and withheld by defendants, involved Sections of the ERISA law. The "Contravening Affidavit", did not contain the needed "disclosure" requested of the Sheet Metal Local # 544 Pension Trust (APP-22 & 23). Plaintiff Weiss was unable to show the State Court Judge, that Weiss "pursued His Administrative Remedies" as ordered by the State Judge A.E. York.

(See cases cited of LUCUS; & of Scheider).

Petitioner (Plaintiff), then on May 19, 1980, filed in U.S. District Court, for the District of Oregon, a, COMPLAINT, requesting, Statuatory Penalities,for the violation of the ERISA LAW, of P.L. 93-406, also known as 29 U.S.C. § 1001, as per Section 502(c), 29 U.S.C. § 1132(c).

> " Any administrator who fails to comply with a request for any information which such Administrator is required by this title to furnish to a participant ... within 30 days of such request may in the court's discretion be personally liable ... in the amount of up to $ 100 a day, from the date of such failure of refusal ...."

In the course of the U.S. Court proceedings, in this legal action, the Respondent (Defendant) has failed to give completely, fully, and satisfactory, to Petitioner, (all) of five (5) seperate U.S. Court Orders of U.S. Judge Owen Panner, and U.S. Magistrate Judge Edward Leavy, "discovery of information",

requested by, and for Petitioner, of monthly records of (copies of) Weiss's past employer's contributions of,"credits" of work hours and money,on "Weiss's behalf" to the Pension Plan. Weiss was given this "discovery", (by the court) to enable him to have conducted an audit-accounting, using Weiss's own Certified Public Accountant. This never came about, due to Respondant's "stonewalling" issuance of some, but not all,(of some, but not all employer's) past employer's monthly records; and even, issuance of false, fraudulent, documents of employers and dates never worked for, or on. This was shown to the U.S. Court and judge, with proof furnished with Weiss's own Social Security records furnished by the U.S. Dept. Of Labor (Social Security Dept). Sanctions filed by Plaintiff, were held in abeyance, until compliance of "discovery orders", and then,

"forgotten" by U.S. Judge (as case was then transferred to U.S. Judge James Redden from U.S. Judge Owen Panner, (no reason given). Plaintiff's "issues of fact", and "issues of law", were ommited by the Defendant's filing offer to the Court, (after a pre=trial Order monitoring by U. S. Magistrate Judge E. Leavy) of a, "composite" of both sides final approved pre-trial order,as monitored under the supervision of U.S. Magistrate Judge E. Leavy. U.S. Judge Redden ordered Defendant counsel to replace both of Plaintiff's "issues of fact, and law". The issue of "fact", was the only "issue" put in the last draft of the pre-trial order. Defendant Counsel added his own version to Plaintiff's portion of his pre-trial order; (not approved by Plaintiff). Defendant Counsel added many (added thoughts to text of order)(final draft) without the approval of Judge and

Plaintiff Weiss. That is why Weiss refused to sign the pre-trial order; and all Judge Redden puts in his December 10th, 1981, Order, is that,"Plaintiff complained of the photocoping of the pre-trial order". That was the least of Plaintiff's complaints; and the U.S. Judge makes no mention of the ommission of Plaintiff's "issues of fact" and"law". All of the above is offered in this STATEMENT OF THE CASE, to show that the Defendant Counsel tried, "censorship" of Plaintiff's own "disclosure" of text, of "issues of fact and law", in the pre-trial order. The Defendant even reserved their own thinking of,"censorship", of,"disclosure", of the U.S. COURT ORDER (5 of them) and the provisions of ERISA, P.L. 93-406 (29 U. S.C. § 1001, and its Sections.

Lack of giving of "disclosure" by the Respondent, is what this Writ of Certiorari , is about. In U.S. Court

Order for "discovery"; (by S/C Judge A.E. York for Contravening Affidavit); for "discovery (with 5 U.S. Court Orders) in Federal CourtProceedings; in a final draft of a pre-trial order; in compliance with Sections of ERISA; it appears the Defendent has used up his allowance of, "carte blanche" of refusals to give "disclosure".

In his December 10th, 1981, order, U.S. Judge James Redden said:

> "...Whether Mr. Weiss received the required information, and what he received are questions of fact which preclude summary judgment."
>
> " That pre-trial order has been lodged and the pleadings have passed out of this case. It is of course binding on the litigants".

"Pleadings have passed out of this case, and is of course binding on the litigants". and with that, the Defendant filed,"not in a timely manner" a brief, in an attempt, "to circumvent going to trial", after U.S. Judge James Redden stated:

> "Penalities for alleged failure to provide information, remains as an issue for trial".

This Defendent's brief was an attempt to discredit Petitioner plaintiff, as a "participant of a pension plan", by saying,"he is not 'vested', or not entitled to, 'benefits'of any type". Plaintiff showed the U.S. District and Circuit Courts with exhibits evidence, he was entitled to,"benefits of any type" by virtue of his being a participant,"in a related plan" and entitled to a,"pro rata (partial) pension", as allowed by a 1976,"Rules and Regulations of the Sheet Metal Workers Local # 544 Pension Plan" that allows for members in a, "related plan":

> " Who would otherwise be inelegible for a pension, because of their years being divided between employment creditable under this plan and another plan". (see APP-20)

Plaintiff showed (with exhibits-evidence) he was elegible under a, "related plan", but this was ignored by the U.S. Courts;

who choose to accept Respondent's precedent of NUGENT v JESUIT HIGH SCHOOL,625 F. 2d 1285 2 EBC 1173 (5th Cir. 1980), which Petitioner has already stated,"was not filed in a timely manner", on December 22, 1981, twelve (12) days after U.S. Judge J. Redden said in his December 10, 1981, order:

> "pretrial order has been lodged and the pleadings has passed out of the case. It is of course binding on the litigants".

RESPONDENT (DEFENDANT) HAD,"TIMELY MANNER TO DISCLAIM PETITIONER AS A PARTICIPANT, BEFORE THE LODGING OF THE PRE-TRIAL ORDER.

Defendant's,"ANSWER BRIEF" of June 11, 1980, to Plaintiff's"COMPLAINT", did not disclaim Plaintiff, as a,"Participant"!

Defendent's "PRETRIAL ORDER", of April 17,& May 18, & September 9th, 1981, drafts of Pre-trial Order(s) and the final P.T.O. did not disclaim Weiss as a "participant". Also Respondent (Defendant)'"SUMMARY

JUDGMENT BRIEF", of October 9th,1981, did not disclaim Plaintiff Weiss, as a participant. Only when U.S. Judge James Redden stated in his December 10th, 1981 Order, "Remains as an issue for trial", did Respondent (Defendant) file his,"Defendant's Motion For Reconsideration And Clarification" brief, of December 22, 1981, with NUGENT, and a, "set of figures", purported) to be the record and bookkeeping of Weiss' past employer's contributions to the Pension Plan. These, "figures" were not accompanied by a sworn affidavit of a public, (or certified public)accountant, as to their authenticity,(accuracy or completeness",(ERISA's Section 107, stated therein). These were "maintained records", that should have , for legal purposes, according to ERISA's Section 107 (29 U.S.C § 1027:

> "... may be verified,explained, or clarified and checked for accuracy and completeness". (sic)... shall

> maintain records on the matters of which disclosure is required"...

Petitioner (plaintiff) showed the U.S. Courts, many times, with exhibits-evidence of,"not recorded", employer's contributions that were not,"reflected" on the bookkeeping records, of the Pension Plan. (At least two (2) past employer's contributions of over 837 hours of,"credits", are not shown on the "printouts" of the records). How many more could be found by an, "audit accounting", remains to be seen. And there were, "differences and discripances" between (2) two different, "credit statements" of Weiss's records, by two (2) different Agent-Administrators of the Pension Plan, issuances of such, "credit" statements (ERISA's Section 105(a). This type of,"shoddy bookkeeping", was later proven, and shown, by a Sworn Affidavit, of a Cumputer System Analyist, (a Mr. S.N. Weiss) who stated (APP-18):

> "Directly involved with the Pension Trust accounting system; and was personally aware that there were occasions of data being lost and unrecovered. the accuracy of the system was generally,"suspect", and resulted in its replacement the Summer of 1982."

Petitioner Weiss, in a brief showed the U.S. Judge James Redden, that in KLEIN v LINDELL, No. 76-488(D/C Ore. 1980), U.S. Judge J. Redden himself denied NUGENT. and Defendant LINDELL's contention, "that the court does not have subject matter jurisdiction", because of the "participant" definition, according to ERISA's Section 3(7), 29 U.S.C. § 1002 (7),"eligible for benefits of any type". At that time, of July 11, 1980, (APP-25) in upholding U.S. Magistrate Judge George Juba, presiding judge in KLEIN v LINDELL, (Table of Auth.) U.S. Judge J. Redden in his Order of July 11, 1980, stated:

> "I have made a de nova review of those portions of the findings ... I fully agree with Judge Juba' findings ..."

This was in reference to U.S. Magistrate G. Juba'statement of May 28, 1980:

> "Plaintiffs, therefore have a valid cause of action for defendant' failure to provide information".

U.S. Judge J. Redden mentions his part in KLEIN,of July 11,1980, he denied Weiss' cause of action, based on similiar issues.

Petitioner filed for a Petition For Appeal on Jan. 27,1982; Notice of Appeal, with a brief filed on March 25,1982. Defendant filed his Appeals Reply Brief on May 20,1982, with a precedent of HERNANDEZ (See Table of Auth.). It is noted here, that the 9th Circuit Court only dealt with and made their determinations solely on the NUGENT and HERNANDEZ, precedents; and nowhere does it show in their opinion that Petitioner' own precedents of HAGER, and the U.S. Supreme Court Certiorari of Jan. 16,1979,were even considered, or entertained, into the legal consideration or determination of the fact, that an

"employee's" vestibility is(or could be) un-determined unless an audit-accounting is used to determine that vestibility". "for benefits of)any type". The Ninth Circuit Judges say, (APP-11):

> "All we decide in this case is that Weiss does not qualify as a participant because he is a former employee who has made no creditable showing that he is vested and because he does not claim he will return to work".

And then the Judges of the Ninth Circuit, disregards their reasons of,"vesting" by turning their attentions and reasons to that of a person, who was vested, but who died, before he retired. (App- 11).

Petitioner Weiss, has not died, his wife is not a widow, he has retired at age 65, and the question of"vestibility", as it has been stated,can only be determinated, by an audit-accounting, and not by the mere word of the Pension Plan, whose word is disputed by Weiss, as well as their own bookkeeping,which they refuse to reveal.

The 9th Circuit Judges said HERNANDEZ had died, and was vested; but pray tell how is a employee-member of a pension plan to show(while he is alive, the possibility of "vesting" without any determination information, under 1025 ?

How can Petitioner Weiss make a credit-showing he is vested, if he has no record book on his past employer' contributions, made to the Plan, and the Pension Plan "stonewalled" the giving of these records ?

Respondent' precedents of NUGENT and HERNANDEZ had to do with"vesting" and the granting of a pension,based on receiving information, if"vested". Petitioner's precedents of HAGER,and the Supreme Court Certiorari , had to do with"disclosure", and not with a pension, but with,"the right to know" through way of "disclosure".

REASONS FOR GRANTING WRIT

The foremost reason, for the,GRANTING OF WRIT, is,"THE RIGHT TO KNOW"!!

Whether it be of the U.S. Government, thru "THE FREEDOM OF INFORMATION ACT" of 1974-76 (5 U.S.C § 552), or by the"disclosure" sections of ERISA (as stated). Petitioner has,"the right to know". This has been shown and proven time and time again, with the sustaining of "THE FREEDOM OF INFORMATION ACT OF 1876, in the U.S. Supreme Court. The denial of(or a without of),"the right to know", imposes a form of censorship , on a citizen of the United States; and could be called an infringment of "free speech of the first Amendment of the U.S. Constitution. "The right to know is an embodiment of Jurisprudence, with"Local and Federal Rules Of Civil Procedures"; with its "request(s) for 'discovery' of informatiom", for either side of a litigation. (As already stated) it is established in the, Certiorari of The U.S. Supreme Court, part IV, of Jan. 16,1979,(see table of Auth.). Even Congress expressly stated

its,"intent to know" with the implied, "right to know", by "disclosure", in this ERISA's Section 2(a)," to safeguard the rights and interests of (sic) "employees" that disclosure be made, and safeguards be provided... in the interests of,"employee".

At no place in ERISA, does Congress place any restriction(s), to circumvent this disclosure provisions of ERISA; nor that a pre-requisite criteria for disclosure , be allowed, by use of a,"vesting participant status", for such. Isn't it possible, that ERISA's Section 3(7),of a definition of a participant,"be eligible to receive benefits of any type", be applied to a person requesting a pension, and not just, "disclosure of information, such as an audit-accounting, of a employee' account in the Plan? Surely, Petitioner's "right to know" of the "correctness" of his account in the Plan, is not too much to inquire of the Pension Plan? Even of a

"set of figures" of questionable "suspect"? Surely a Pension Plan, honest, and nothing to hide, or,"coverup", would have been only too glad to show their bookkeeping of records is,"above board" and correct. But to refuse an audit-accounting, does make the Pension Plan very,"suspect", by a Plan's member, who only wants his,"right to know" of his personal, account with the Pension Plan. If, or when, the abrogation of,"the right to know",by "disclosure of information", comes into existance, and suppresses "self-wanted knowledge", it would be part of a,"1984 Orwellian Society of controlled minds, and laws. This Pension Plan would have, its'"foot in the door" that a member-employee, has to be a "vested participant" in order to receive, "disclosure of information", regarding his "vesting", or anything else of the Plan.

A member of a pension plan is an "employee" of the plan; and not a "definit-

ioned participant", as of ERISA's Section 3(7). Surely Congress of 1974, makes this distinction, the first time, in ERISA ... by saying,"employees", instead of using the word,"participant(s); and in ERISA's Section 2(a) Congress inserted the phrase:

> "... continued well being and security of millions of employees ... owing to the lack of employee information ... safeguard... in the interests of employees...by disclosure "...

Altho the word,"participant" is used later, on many occasions, in ERISA , it could conceivable believed, that Congress could have meant; a person, an individual, an employee-member, who takes part, or is, participating part of a pension plan, by way of his employer's contributions to the plan, on behalf of that employee, and so he is a member of the pension plan. This is why Petitioner Weiss believes a ruling on, a "determination on the differentiation of the words,'employee' and partici-

pant", is needed, to be able to request "disclosure". Where is the,"check and balance" and of,"the right to know"? And if the Pension Plan people are adamant to "disclosure",by a member-employee, then they should be subjected to,"statuatory penalities of ERISA's Section 502(c)".

Congress of 1974, could not have imposed such strict penalities, as measures, "to safeguard the rights and interests of, "employees", if it were not meant for pension plans to give,'requested disclosure' nor would Congress have imposed strict measures to hamper such,"disclosures" by arbitrary, capricious, hinderances; such as having a person be,"vested", as a criteria, for,"disclosure".

Is the Ninth Circuit Court's determination, that with ERISA, to be a'participant' you first had to prove that you are "vested"? The Ninth Circuit partically relied on NUGENT. However NUGENT is

clearly indistingusable from yhis case, because in NUGENT, the Courts held, as a fact, that the employee was not"vested", and(hence not a "participant" entitled to pension information). The 29 U.S.C. § 1002 (7) states that:

> "any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan".

The Ninth Circuit Court erred, in holding that a,"participant" had to be 'vested' to come within the purview of ERISA's Section 107. A former employee who does not know whether he is "vested" and hence a,"participant", has to have an audit-accounting, of his "credits" in the Pension Plan, and these "credits", "checked for accuracy and completeness". As ERISA's Section 2(a) says:

> "owning to the lack of employee information...disclosure be made and safeguards be provided...(sic)...in the interests of employees ..."

Here, in WEISS v SHEET METAL # 544

the information that was provided was contradictory on its face. Therefore, the defendant's respond, should be an audit-accounting, as required by ERISA's Sections, as stated, about,"maintained records", in Section 107, of"accuracy"and "completeness"; as the record information, of the Pension Plan given to Petitioner, were not,"accurate, nor were they complete.

During the receiving, accepting, and recording of the employer's contributions of "credits" "participant status, of a "participant was there. Because, would the Trustees, and Plan Administrators have given to Petitioner Weiss ... copies of:

> Trustees meetings; Booklets of the Plans' Rules and Regulations; Print-outs of the Plan' data computer book-keeping Weiss' records (inaccurate); 2 pension applications, for a whole and a pro rata pension (only given to # 544 participants of the Plan; Copies of Collective Bargaining Agreements (work contracts);

and carried on pertinent, important busin-ess matters for, and of the Pension Plan.

This has to be with a recognized employee member- participant. The Pension Plan surely would not have shared such secrets and important documents, and data,with strangers, or with just anybody. A person, receiving the above material, had to be a participant, in every sense of the word.

In HAGER, the Plaintiff, there, was allowed"disclosure" and awarded monetary statuatory penalities for the plan's failure and refusal to provide "disclosure' of information". The Certiorari of the Jan. 16,1979, U.S. Supreme Court, allows for, "disclosure of specified information in a specified manner to employees, in a pension plan. The precedents of HAGER, and the Supreme Court Certiorari , should have been honored, respected, referred, and addressed to, as part of the U.S.District and the Ninth Circuit Court's OPINION.

But the U.S. Courts, only used the Respondent's precedents. Petitioner objects.

CONCLUSIONS

How is a plan member,to determine for himself,his status in a pension plan, without,disclosure? ERISA allows for"self-determination"; "the right to know". The Plan Administrator issuance in 1975,& 1978, of Weiss' "credits" statements,ERISA Section 105(a) that were diametrically different from each other, and needed "rectifying and vertifying" by an audit-accounting. Violation of ERISA by refusal, of Section 107, gives Plan Administrators, "Carte Blanche", to violate at their own discretion.Congress with ERISA did not intend this subornation of a safeguard for employees in a pension plan., of rights.

For the foregoing reasons and conclusions this Writ For Certiorari should be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Morris Weiss, certifies that he is pro per, for Petitioner; at 7033 N.E. Everett Street, Portland Oregon, 97213. that he served on James Kasameyer, Attorney for Sheet Metal Workers Union Local No. 544 Pension Trust Plan,on the date of February 13, 1984,Monday; three copies thereof (correct), certified by me as such, and delivered in person, by hand, copies of PETITION FOR WRIT OF CERTIORARI. Copies of said WRIT to be filed with the UNITED STATES SUPREME COURT, on said date of February 13, 1984. Morris Weiss.

Dated this February 13, 1984.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MORRIS WEISS Plaintiff, v JAMES W. KASAMEYER CARNEY,PROBST,& CORNELIUS 410 Riviera Plaza 1618 S.W. First Ave. Portland Ore. 97205 Attorneys for Defendants	Civil No. 80-505 ORDER

REDDEN, Judge:

The defendants motion for summary judgment with respect to the availability to Mr. Weiss of the audit procedure of 29 U. S.C.§ 1024 is GRANTED.Clearly the statute grants the right to request such an audit to the Sec. of Labor, not to Participants.

With respect to whether there was a violation of § 1024 & 1025 in that the defendants allegedily did not provide Mr. Weiss with all the information to which he was entitled, summary judgment is precluded by issues of fact. While the

defendants contends that the information was actually furnished Mr. Weiss appears to deny both the sufficiency and the timeliness of the provided information. Summary judgment is appropriate "... when there is no genuine issue of fact or when viewing the evidence and the inferences which may be drawn therefrom in light most favorable to the adverse party as a matter of law". GAINES v HAUGHTON, 625 F.2d 761 (9th Cir. 1981). Whether Mr. Weiss received the required information and what he received are questions of fact which preclude summary judgment. Therefore the questions of whether Mr. Weiss should receive all or part of the statuatory $ 100-a-day penalities for alleged failure to provide this information remains as an issue for trial. With respect to these issues, the motion for summary judgment is DENIED. As for punitive damages, however, I conclude that ERISA provides its own remedies

for violations and that claims for punitive damages or emotional distress are not cognizable under it. HURD v RETIREMENT FUND, 424 F.Supp. (C.D.1976). I therefore GRANT the defendant' motion on this issue and hold that punitive damages are not available in this action. I believe that the question of the availability of attorney' fees is premature at this time since neither side has prevailed. I will address this issue upon a motion after trial, if one is made. With respect to the demand for a jury trial, it appears that the great weight of authority on the issue holds that there is no entitlement to a jury trial in ERISA actions. CALAMIA v SPIVEY,623 F.2d 1235 (5th Cir. 1980). WARDLE v CEN. STATES S.E. & S.W. AREAS PENSION FUND 627 F.2d 820 (7th Cir. 1980); STAMPS v MICHIGAN TEAMSTERS JOINT COUNCIL 43 431 F.Supp. 745 (E.D. Mich.1977). I hold there is no right to a jury trial in this

case, and therefore GRANT the portion of defendant' motion addressed to that issue.

While I have carefully considered the application to this case of the bar of res judica and collaterial estopel as a result of the prior state court proceedings, it appears that the judge in that proceedings may possibly have felt that he lacked jurisdiction to consider Weiss' claim that he was denied proceedural safeguards mandated by ERISA. Certainly a claim for damages as a result of wrongful refusal to provide Weiss with required information could not be barred by the state proceedings, since exclusive jurisdiction over such a claim is conferred on the federal courts by 29 U.S.C.§ 1132 (e)(1). I therefore hold that those issues are not barred from litigation here. Possibly this ruling represents an excess of caution, however I am inclined to give the benefit of the doubt to the pro se litigant.

Nonetheless it is clear that the state court would bar re-litigation of the issue of Mr.Weiss' entitlement to a pension, an issue which I do not understand him to be reasserting here. I am also compelled to make a clarification with respect to the pre-trial order in this case. That pre-trial order has been lodged and the pleadings have passed out of this case. It is of course, binding on the litigants. The court experienced some difficulity in helping the parties achieve a pre-trial order in this case. After considerable negotiation, the court was under the impression that the parties had achieved agreement on a pre-trial order. However Mr. Weiss next raised an objection to the quality of photocopying in the document. The court examined the document and found it legible, and determined that Mr. Weiss substantive rights would not be prejudiced by an acceptance of the document in its

presesent state. Rather than cause further delay in the lodging of the pre-trial order when it appeared that there was no real dispute as to substantive contents, the court accepted the document "as is". Because Mr. Weiss stated he would not sign the document if he did not like the quality of photocopying, the court waved the requirement that he sign the document before the court accepted it.However the court' order at the time was clear in that it plainly accepted the pre-trial order, which thus superseded the pleadings. Mr. Weiss may not now attempt to disavow the contents of the order which he agreed to, save for non-substantive complaints as to form. Dated this 10th day of December 1981.

James A. Redden U.S. District Court.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MORRIS WEISS Plaintiff, v JAMES W. KASAMEYER CARNEY,PROBST,& CORNELIUS 410 Riviera Plaza 1618 S.W. First Ave. Portland Ore. 97205 Attorneys for Defendants	Civil No. 80-505 ORDER

REDDEN,Judge:

Plaintiff (pro per) brings his action under ERISA 29 U.S.C.§§ 1101 et seq. The matter now before me is on the motion of both parties for reconsideration of my ruling of December 10, 1981. I then granted and denied, in part, cross motions for summary judgment.

Defendants now bring to my attention a case not previously considered, NUGENT v JESUIT HIGH SCHOOL,625 F.2d 1285 (5th Cir. 1980). There the Fifth Circuit held that a former employee whose pension rights had

not vested and who, therefore not entitled to a pension, is not a,"participant" within the purview of the act. Id. at 1288. Plaintiff has briefed this issue and submitted his memorandum. Defendant must prevail on this issue and summary judgment should be granted to defendant. NUGENT relied on GOLDEN v KENTILE FLOORS,512 F.2d 838(5th Cir. 1975), holding that Congress did not intend the term"participant" to encompass all former employees but only those whose pension rights had vested. It is undisputed, here that Weiss is a former employee whose pension rights did not vest. He is not entitled to a pension. These questions have been earlier decided against plaintiff in the state trial and appellate court. Those decisions are res judica and Weiss no longer contends otherwise. His claim here is for the statuatory penalities which would result from a fund' failure to provide certain

information.

Plaintiff argues that NUGENT is not the law, and relies on KLEIN v LINDELL, No. 76-488 (Dis.Ore. 1980). KLEIN, decided before NUGENT, treated the issue before me briefly. That decision notes that the prior Fifth Circuit decision in GOLDEN did not treat the issue raised here. Plaintiff misinterpets this comment to mean that I should ignore NUGENT which is directly in point. NUGENT is the only treatment of this issue by a Circuit Court Of Appeals and the opinion is persuative. Congress did not intend to confer substantive rights upon individuals who are not vested at the effective date of ERISA. I find no Ninth Circuit decision directly in point, although they have cited NUGENT with approval on a collateral issue, see GRIMES v OPERATIVE PLASTERS, 640 F.2d 1066 (9th Cir. 1981).

I am convinced that NUGENT is correct on

the issue before me.

I therefore GRANT the defendant' motion for summary judgment and DISMISS this action.

Dated this 25th day of January, 1982.

James A. Redden
United States District Judge.

(Defendants have requested oral arguments here, but plaintiff objects pointing out that oral arguments will not assist the court. I agree.)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MORRIS WEISS Plaintiff-Appellant, vs SHEET METAL WORKERS LOCAL No. 544 PENSION TRUST, et al., Defendants-Appellees	No. 82-3056 D.C. No.CV 80-505-JAR OPINION

Appeal from the United States District Court for the District of Oregon

JAMES A. REDDEN, U.S. District Judge, Presiding.

Argued and Submitted Jan. 3,1983

Opinioned October 25, 1983.

Before: FERGUSON,BOOCHEVER,AND NORRIS, Circuit Judges.

PER CURIAM:

Appellant, a pro se litigant, claims he has been unfairly denied access to information about his pension status held by the administrators of the Pension Trust of the Sheet Metal Workers Local No. 544 ("Trust"). Appellant is a retired laborer who worked sporadically from 1961 to 1977. He does

not in this action claim entitlement to a pension; nor does he make a creditable showing that he satisfied minimum vesting requirements during his employment, or that there is any significant probability that he will be reemployed. The district court held that the appellant is not a "participant" within the meaning of the Employee Retirement Income Security Program Act ("Act"), 29 U.S.C.§ 1002(7), and therefore is not entitled to information under 29 U.S.C. § 1025. We affirm.

Section 1025 of the Act provides that

> each administrator of an employee pension plan shall furnish to any plan participant or beneficiary who so requests in writing a statement indicating
> (1) the total benefits accrued; and
> (2) the non-forefeitable pension benefits if any, which have accrued ...

Section 1002(7) defines "participant" as "any employee or former employee... who is or may become eligible to receive a benefit of any type from an employee benefit plan ..."(emphas added). Quite clearly, there-

fore, Weiss may have access to pension information under § 1025 only if he can show that he is a former employee who "is or may become eligible" for some type of pension benefit.

In NUGENT v JESUIT HIGH SCHOOL,625 F.2d 1285 (5th Cir. 1980), the Fifth Circuit held that a former employee who was not entitled to a pension because his pension rights had not vested is not a"participant" within the purview of the Act. Finding that Congress did not intend to subject pension fund administrators to the burdon and expense of maintaining pension information for employees unable to make any claims for pension benefits, the Fifth Circuit interpreted the "may become eligible" language of § 1002(7) as applicable only to current, not to former, employees. Id at 1287-89. In deciding the case before us, we need not go as far as NUGENT in holding that the "may become

eligible" language of § 1002(7) is restricted to current employees.[1/] We leave open the question whether a former employee may qualify as a"participant" by making a showing that he "may become eligible" because there is a significant probability he may return to work and satisfy vesting requirements in the future. All we decide in this case is that Weiss does not qualify as a "participant" because he is a former employee who has made no credible showing that he is vested and because he does not claim he will return to work. We thus hold that he is not entitled to access to pension information under § 1025.[2/]

Weiss's other claims are without merit. His claim that the trial judge was biased because he had received general endorsements and contributions from some labor unions during his 1972 and 1976 campaigns for state offices is dismissed because it was not timely raised. Weiss has not shown

neither good cause why he did not file an affidavit requesting the trial judge to recuse himself under 28 U.S.C. § 144, see United States v Sibla, 624 F.2d 864 867 (9th Cir. 1980)("Section 144 expressly conditions relief upon the filing of a timely and legally sufficient affidavit"), nor exceptional circumstances why we should consider for the first time on appeal whether the trial judge should have disqualified himself under 28 U.S.C. § 455. See United States v Conforte, 624 F.2d 869 879 (9th Cir. 1980)(no exceptional circumstances shown where appellant did not demonstrate that "evidnce could not have been discovered with due diligence at a time early enough to form the bases for timely motion before trial"). Even were we to reach the merits, Weiss has not shown that it was plain error for the trial judge not to disqualify himself. United States v Schreiber,599 F.2d (3d Cir.1979)

(adopting plain error test to govern claim that trial judge should have disqualified himself when claim was raised for first time on appeal). Weiss's other claims -- that the district court should have imposed sanctions for the Trust's alleged failure to comply with discovery orders and the pre-trial order was xeroxed inadequately -- are rejected as clearly lacking in merit. AFFIRMED.

1.Nor need we decide how much a showing a petitioner claiming that he is a former vested employee must make before gaining access to information. Weiss makes no showing that the information he seeks would demonstrate that he was, in fact, vested.

2. Our holding is consistant with our decision in HERNANDEZ v SOUTHERN NEVADA CUL. & BARTENDERS PENSION TRUST, 662 F.2d 617 (9th Cir. 1981). There,we held that the widow of an employee who had vested but who had died before he became eligible to

receive pension benefits was not entitled to information about her husband's pension benefits under § 1025.

****

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MORRIS WEISS

Plaintiff-Appellant,

v

SHEET METAL WORKERS LOCAL NO. 544 PENSION TRUST, et al

Defendants-Appellees,

NO. 82-3056

ORDER

Appel from the United States District Ct.
For the District Of Oregon

Honorable James A Redden,U.S. District Judge Presiding.

Argued and Submitted January 3, 1983
Order of December 23, 1983

Before: FERGUSON;BOOCHEVER;& NORRIS;
CIRCUIT JUDGES

The panel as constituded in the above case has voted to deny the petition for rehearing filed by appellant. The petition for rehearing is DENIED.(Not signed by Judges)

MORRIS WEISS
Plaintiff-Appellant,
v
SHEET METAL WORKERS LOCAL #544 PENSION PLAN, et al,
Defendant-Appellees,

A/C NO.82-3056
D/C NO.80-505

AFFIDAVIT

I, Samuel N. Weiss, first being duly sworn, dispose and say:

I having been engaged by First Interstate Service Co., during the period from Sept. 1980, to Aug., 1982, had assign duties, responsibilities, coincidental with, and in some cases, directly involved with the Pension Trust Accounting System; and was personally aware that there were occasions of Data being lost and unrecovered. The accuracy of the system was generally "suspect", and resulted in its replacement during the Summer of 1982.

My personal and professional knowledge of the system would lead me to suspect that the First Interstate Trust Department, may in fact, be incapable of reconstructing the

information.

STATE OF OREGON :
SS.
COUNTY OF MULTNOMAH:

SIGNED, SAMUEL N. WEISS.

Subscribed and Sworn, to before me,this 1st, November 1983.

NOTORY PUBLIC FOR OREGON
MY COMMISSION EXPIRES 4/3/87.

(Foot note): This was offered to the Ninth Circuit Court of Appeals on November 3,1983 in a brief for Rehearing, to show the court the mess the accounting and bookkeeping situation was, and is, with those who record-kept plaintiff-appellant's records of his past employers contributions.

(Is it possible an audit-accounting would by the Pension Trust Plan would be an embarressment to the Pension Trust Plan; hence the"coverup", the "hiding of shoddy record-keeping", resulting in the Pension Plan not giving a requested audit-accounting ?)

September 30, 1977.

REVISED PENSION PLAN
for the
EMPLOYER SHEET METAL WORKERS LOCAL NO.544
PENSION TRUST PLAN

(Section revision effective Jan1,1976)

This revised Pension Plan is applicable only to pensions or other benefits which commenced on and after January 1, 1976. Pensions or benefits which commenced prior to January 1, 1976, as well as deferred benefits vested, of former employees whose participations terminated prior to January 1.1976, are determined in accordance with provisions of the Prior Plan.

ARTICLE 1. DEFINITIONS.

ARTICLE 4. PRO RATA PENSIONS

Sections 4.01. Pro rata Pensions are provided under this plan for Employees who would otherwise be ineligible for a pension because their years of employment have been divided between employment creditable under this plan and employment creditable under

under another plan, or whose pensions would be less than the full amount because of such division of employment.

Section 4.02. Related Plans. By resolutions duly adopted, the Board of Trustees may recognize another plan as a Related Plan.

Section 4.03. Related Hours. The term "Related Hours" means hours of employment which are creditable under a Related Plan.

(Foot note): This above provision of the # 544 Pension Plan, allows Mr. Weiss, Petitioner, "benefits of any type"; ERISA Section 2(7), by way of a, "pro rata" pension.) (Emphasis above, added by Petitioner.)

IN THE DISTRICT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

MORRIS WEISS Plaintiff, v EMPLOYER SHEET METAL WORKER LOCAL # 544 PENSION TRUST PLAN,TRUSTEES, et al., Defendants.	))NO. 170-657))ORDER AND)PROPOSED FIND-)ING ON MOTION)FOR SUMMARY)JUDGMENT

...(sic) Defendant contend that Plaintiff has not pursued his administrative remedies as provided under the Pension Trust and/or the rules of the Collective Barganing Agreement of the defendant Union and Employers.

Plaintiff contends that contributions made by his employers to the Trustees under the Plan are in fact and law back wages. Defendants deny said contentions. The Court

CONCLUDES

That the determination as to the characterizations of the employer's contributions are not necessary to the determination of the issues herein for the reasons that the

plaintiff has failed to exhaust his administrative remedies.

The plaintiff is hereby given thirty days (30), to file a counter-affidavit to contravene Defendant' affidavit in support of its motion for a summary judgment, and and the proposed findings herein set forth, it is hereby ORDERED

That Plaintiff' affidavit shall be filed with the court no later than September 15, 1978. s/ Edwin A. York, Judge.

(Footnote): This "ORDER FOR FINDINGS ON MOTION FOR SUMMARY JUDGMENT", was rendered by State Court Judge A.E. York, along the same time of court proceedings of December 18, 1978. The above,"ORDER FOR FINDINGS" was issued at the same time and date as the next ORDER produced here.)

****

IN THE DISTRICT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MORRIS WEISS Plaintiff, v EMPLOYER SHEET METAL WORKER LOCAL # 544 PENSION TRUST	)	NO. 170-675 ORDER

PLAN, TRUSTEES, et al.,)
Defendants)
)

... (sic) The Court having treated plaintiff' motion as a request to vacate and stay the Summary Judgment entered on December 12,'78 for further proceedings and to file a counter-affidavit with respect to the issue

ORDERED

That the Summary Judgment heretofore entered on behalf of the defendants be and the same is hereby vacated and stayed until further order of the court, and it is hereby further

ORDERED

that plaintiff shall have until December 27, 1978; at 8:45 A.M. December 27, 1978, in which to file a Counter-Affidavit and counsel for defendants shall be served a copy thereof at or prior to 8:45 A.M. December 27, 1978. Dated at Portland Oregon, 18th day of December 1978.

s/ Edwin A. York, Judge.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

KLEIN, et al., Plaintiff,	)	Civil No. 76-488
v	)	ORDER
LINDELL, ET AL., Defendants,	)	

Defendants, Allen K. Lindell, A.S.E. Supply, Inc. and Employee' Pension Trust, and Employees' Pension Trust, have filed objections to certain rulings made by Judge Juba on May 28, 1980. I have made a de nova review of those portions of the findings to which the Defendants object. I fully agree with Judge Juba's findings, and therefore I affirm his decision.

Plaintiff' and Defendants motion for Summary Judgment are denied. Defendant' motion to dismiss for lack of subject matter is also denied. James A. Redden

(July 11,1980) U.S. District Judge.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ARNOLD KLEIN, et al., Plaintiffs, v ALLEN LINDELL, et al., Defendants,	Civil No. 76-488 FINDINGS AND RECOMMENDATIONS

...Defendants cite Martin v Bankers Trust Co., 417 F.Supp. 923(W.D. Va. 1976), aff'd 565 F.2d 1276(4th Cir. 1977). There, the plaintiff, a former employee of the defendant, claiming entitlement to pension plan benefits, under ERISA even though he had been terminated and denied benefits prior to ERISA's effective date. The Fifth Circuit affirmed the District Court's dismissal of the complaint for lack of subject matter jurisdiction. In the Court' view, ERISA could not be applied retroactively to a cause of action which arose before ERISA was enacted. Defendants also

rely upon Golden v Kentile Floors Inc., 512 F.2d 838(5th Cir. 1975). Plaintiff, a former employee of Kentile's profit sharing plan violated the anti-trust laws and sought reinstatement to the plan and an award of attorney's fees. Plaintiff was deemed to have forfeited his benefits when he began working for a competitor. After the Pension Plan Committee notified plaintiff he had forfeited his benefits, plaintiff requested copies of various plan documents. The court held that plaintiff was not entitled to recover statuatory penalities against the committee for its failure to provide plaintiff with the documents he requested. The court said:

> The sole question,then we believe, is whether plaintiff remained a participant in the plan within the meaning of the Act at the time he sought disclosure from the committee. In words of § 302(a)(6), was he a "former employee ... who(was) or (might) become eligible to receive a benefit of any type... or whose beneficiaries(might) be eligible..."?

512 F.2d at 850. The court held that plaintiff was not a "participant" because he had received a final notice from the committee termination his benefits. Since only "beneficiaries" or "participants" could bring an action for statuatory penalities, the court ruled that the district court erred in awarding statuatory penalities. ASE and Lindell contend that this action is analogous to Golden because each plaintiff knew, or was told, at the time he left ASE's employ that he was not entitled to benefits under ASE' Pension Plan. Plaintiffs point out that at least one court within the Ninth Circuit expressly rejected Martin v Bankers Trust Co. In Morgan v Labors Pension Trust Fund,433 F. Supp. 518 (N.D. Cal. 1977), the court commented:

> At least one court had indicated that an action under ERISA may accrue on the date that a potential pensioner's emplcyment ends. See Martin v Bankers Trust Co. 417 F. Supp.(W.D. Va. 1976).

> Such a rule seems inappropriate since any wrong that is committed occurs on the date the pension is denied, not when an applicant quits working for an employer.

Id. at 523. Similarly, in Reiherzer v Shannon, 581 F.2d 1266 (7th Cir. 1978),the plaintiff terminated his employment with the defendant prior to the effective date of ERISA. His requests for benefits was filed and denied after enactment of ERISA. The court held that his cause of action for benefits accrued when his requests was denied and, therefore, that the court had jurisdiction under 29 U.S.C. § 1132(a)(1)(B). Plaintiffs also rely on HAGER v VECO CORP., an action arising in the United States District Court for the Northern District of Illinois, See Pension Reporter No. 256 p. D-1 (August 1979). In Hager, plaintiff was terminated and received what the administrator considered to be full payment of his interests under his employer's profit sharing and pension plans.

Plaintiff disagreed as to the amount due him and made a written request for certain plan documents. The employer refused to turn over the documents, arguing that Hager was no longer entitled to benefits and,therefore was not a "participant" entitled to receive information. The court held that the plaintiff was entitled to receive the requested documents, regardless of whether he was a participant at the time of his formal request. In the court's view, any other interpretation of ERISA would give an employer "unchecked power to make final distribution of a participant's interest without being held accountable to the receipt of that distribution".

After reviewing the authorities cited by the parties, I find that this court has subject matter jurisdiction of plaintiff' failue to provide information claim. The logical argument is to give the employer the unilateral power to terminate the

employee, cut off the employee's pension plan benefits, and deny him access to any pension plan information. In the contex of this case, such a result is contrary to ERISA's stated policy to make available to employees a broader scope of information concerning employee benefit plans. It would also deny any employee the means to determine for himself whether he is entitled to pension benefits, and to challenge his employer's determimation regarding his eligibility to receive benefits.

Although Golden appears to support defendants position, defendants have failed to point out one feature of the case. The court held that the plaintiff was not entitled to statuatory penalities because he was not a"participant" within the meaning of the Act. The court did not dismiss his failure to provide information claim for lack of subject matter jurisdiction. In fact,plaintiff went to trial on that

claim. Plaintiff', therefore, have a valid cause of action for defendants' failure to provide information during the period December 1975 through September 1979.

Each side has submitted affidavits which give conflicting versions of the facts. Material issues of fact exist with respect to the time at which plaintiffs were first given access to the documents and defendants' motives, if any, for not producing the documents earlier than August 1978. therefore, both motions for summary judgment should be denied. Defendants motion to dismiss for lack of subject matter jurisdiction should be denied.

Dated this 28th day of May,1980.

s/ George E. Juba

United States Magistrate.

(Foot note): The above"Recommendations and Findings" are excerpts from the lengthly brief of U.S. Magistrate Judge George E. Juba. To reproduce all of it in its entirety would exceed Petitioner' page allowance of this WRIT OF CERTIORARI.

(Foot note continued):

If requested by the Honorable Justices of the United States Supreme Court, Petitioner, will submit,(under seperate cover, the brief of U.S. Magistrate G. Juba, in its entirety, of "Findings and Recommendations".

It is to be noted of APP-31, the following as stated in Judge G. Juba's brief:

> " It would also deny any employee the means to determine for himself whether he is entitled to pension plan benefits and to challenge his employer's determination regarding his eligibility to receive benefits."

This is why Petitioner believes that his Hager v Veco Co. precedent, as presented to the U.S. District and Ninth Circuit Court, should have been addressed to by the Judges of the Court(s), as the above quote states:

> "...to determine for himself... to challenge his employer' determination... regarding his eligibility ....

AFFIDAVIT OF JAN DAWSON

I, Jan Dawson, being first sworn, dispose and say as follows: ... "Records for the year 1977 are in hard copy; the trust has a copy of each employer' monthly contributions made on behalf of employees to the Trust. The microfilm records consists of duplicates of such pages of monthly reports submitted by contributing employers to the Trust for the years since the Trust' inception in 1961. The microfilmed records are kept in the Security Vault of the Bank. (Made March 12,1981) s/ Jan Dawson.

****

AFFIDAVIT OF JAN DAWSON

I, Jan Dawson, being first sworn, dispose and say: ...Specifically, the Trust does not have, and therefore can not furnish to Plaintiff, month by month reports of employers contributions ... for hours worked for the following employers; Wentworth & Irwin,May,1960; Tompson Metal Fab. March 1961;American Sheet Metal Sept.1964, thru

November 1965, and June 1966 to October 4, 1966; W.R. Rovang & Co., Oct. through Dec. 1966. (Dated, March 27, 1981).

Signed, Jan Dawson.

****

TRANSCRIPT OF COURT HEARING

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MORRIS WEISS, Plaintiff,	)	
v	)	Civ. 80-505
SHEET METAL WORKERS UNION LOCAL #544,et al., Defendants,	)	Portland Ore. Aug.5, 1981

MRS. DAWSON: we did provide him with pictures of the reporting forms through the time he asked and the companies he asked for at this time which he said he worked. His name was not on these reporting forms. So he refused to look at them because he did not have his name on them which obviously meant the company did not report

for him. His name was not on there ...

(Transcripi made by , U.S. Court Reporter Mr. Jerry Harris, 226 U.S. Courthouse, Portland Oregon.

(Foot note): The above is a transcript of a hearing before U.S. Judge James Redden, regarding,"failure to comply with five (5) U.S. Court Orders).(These copies of reporting forms were looked at, and compared with data of work earnings on Social Security Records, from the Dept. Of Labor, and Weiss' name is not on the produced records by the Trust, because Weiss did not work for the employers, nor on the dates of the form).

(Foot note): If these are (See APP-18):

> ..."maintained records...(to be) 'checked'for accuracy and completeness"...(ERISA at 107)

Then where are they ??? Or is this a "stonewalling attempt to"circumvent by subornation" from complying with five (5) U.S. Court Orders, and,"right to know"!

END OF DOCKET